

# EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**RACHAEL ANNE ELROD, ANDREW  
KAUFMAN, and SARAH MARTIN, on  
behalf of themselves and all others  
similarly situated,**

**Plaintiffs,**

**v.**

**NO TAX 4 NASH, MICHELLE  
FOREMAN, and JOHN DOES 1-10,**

**Defendants.**

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**BROOKS BRASFIELD, on behalf of  
himself and all others similarly situated,**

**Plaintiff,**

**v.**

**NO TAX 4 NASH, MICHELLE  
FOREMAN, and JOHN DOES 1-10,**

**Defendants.**

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**Case No. 3:20-cv-00617**

**District Judge Eli J. Richardson  
Magistrate Judge Barbara D. Holmes**

**Case No.: 3:20-cv-00618**

**District Judge Eli J. Richardson  
Magistrate Judge Barbara D. Holmes**

**CLASS ACTION**

**JURY DEMANDED**

**DECLARATION OF JOE GERGLEY**

I, Joe Gergley, declare and state as follows:

1. I am over 21 years of age, am otherwise competent to testify, have personal knowledge of the matters contained in this declaration, and, if called as a witness, could and would testify competently to them.

2. I am the owner and operator of Hypermetrics LLC ("Hypermetrics"), a for-profit limited liability company organized under the laws of Ohio. Hypermetrics is a vendor which provides social media advertising, and telephone survey/polling/and messaging services, including robocalls, largely on behalf of political campaigns.

3. In July, 2020, my company Hypermetrics was hired by a company called Best Sellers ("Best Sellers") to provide robocall services for No Tax 4 Nash.

4. On July 15<sup>th</sup>, 2020, I spoke by telephone with Heather Sellers of Best Sellers and Michelle Foreman about the possibility of No Tax 4 Nash sending a robocall in the Nashville, Tennessee market. I took notes as Ms. Sellers and Ms. Foreman discussed what No Tax 4 Nash wanted the robocall to say.

5. The next day, July 16, 2020, Ms. Sellers informed me No Tax 4 Nash wanted to go forward with the robocall that evening. Ms. Sellers forwarded me an email from Ms. Foreman attaching a list of names and telephone numbers to contact with the robocall. That list was an Excel spreadsheet titled, "Voter Data list Feb 2020.xlsx."

6. When I learned that No Tax 4 Nash would be proceeding with the call, I texted Ms. Foreman the rough script that had been discussed and let her know that in order for the robocall to send that evening, Hypermetrics needed a pre-recorded message, as well as a local phone number for the group to appear on caller ID. It is my understanding that Ms. Foreman created a Google Voice number (615-348-5237) to utilize as the local phone number. I received both the number and an .m4a audio file of the pre-recorded message from Ms. Foreman at approximately 8:09 PM EDT, 7:09 PM CDT.

7. Both the pre-recorded message and the list of telephone numbers were uploaded to an internet-based platform which sends the pre-recorded message to the telephone numbers on the

list using an autodialer, in that the platform is capable of transmitting the robocalls without anyone manually dialing each such call. Because this was a standard robocall, the pre-recorded message played if the person being called picked up the phone. If the person being called does not pick up the phone, a voicemail is left.

8. Using my autodialer platform, I scheduled the calls to go out immediately, and scheduled them to end at 8:59 PM CDT. Shortly after the autodialer started transmitting the robocalls, Ms. Foreman texted me to confirm that people were receiving the robocalls. By the end of the scheduled end time on July 16<sup>th</sup>, an estimated 200,000 robocalls with the pre-recorded message from Ms. Foreman were made to numbers on the "Voter Data list Feb 2020.xlsx" file.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: 3-6-2021

  
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Joe Gergley